

Rules of Procedure and outline
of Procedures for Trial accused
(war crimes)

(7)

(10)

HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Commanding General
APO 343

AG 000.5 (YO)

5 February 1946

SUBJECT: Rules of Procedure and Outline of Procedure for Trials of
Accused War Criminals.

TO : Presidents of War Crimes Commissions.

SECTION I: RULES OF PROCEDURE

The following rules of procedure, in addition to and supplemental to regulations governing the trials of accused war criminals, as outlined in Letter, General Headquarters, Supreme Commander for the Allied Powers, AG 000.5 (5 Dec 45)LS, Subject: "Regulations Governing the Trials of Accused War Criminals," dated 5 December 1945, will govern the trial of persons, units and organizations accused as War Criminals.

1. Affidavits, Statements, Documents, and Preliminary Motions.

a. Copies of all statements, affidavits, and other documents which the prosecution proposes to introduce into evidence will be furnished to the defense at the time a case is referred for trial. At least 24 hours prior to arraignment, the defense will furnish to the prosecution copies of all statements, affidavits, and other documents then in its possession which the defense proposes to introduce into evidence. Subsequent to this time, any other statements, affidavits and documents proposed to be introduced into evidence by the defense will be furnished opposing counsel as soon as possible.

b. Either side will indicate to opposing counsel the portions of any , affidavit or other document it proposes to offer as evidence in the trial. Such indication will be made at the time copies thereof are furnished or made available to opposing counsel.

c. If, either before or during the trial, but after copies of the documents have been furnished to opposing counsel, as set out above, either side receives or is apprised of additional documents which will be used in the trial, it will notify opposing counsel thereof as promptly as possible, and thereafter furnish copies as soon as practicable. Opposing counsel will then promptly take such action as may be necessary with the view of avoiding any delay in the trial of the case.

d. The rules set out in a, b, and c above will not be construed to include statements of the accused or any other witness who is available to appear in person before the Commission.

e. Prior to trial, both prosecution and defense will furnish opposing counsel copies of any preliminary motions to be made to the Commission.

2. Affidavits.

In offering affidavits or other written statements of testimony the prosecution will preface the offer with a statement as to whether or not to the best of the prosecution's knowledge or information the affiant or the author of the statement is at the time of the trial present in either the Philippine Islands, the Ryukyus, Japan, or Korea.

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3. Rights of the Accused as Witness.

a. The accused may take the stand as a witness or he may remain silent. If he takes the stand he may make a sworn or unsworn statement but in either case he will be subject to cross-examination on statement made, cross-examination is nowise to be limited to matters brought out on direct examination.

b. If he remains silent, the Commission may draw such inference from his failure to testify as may seem fair and competent to a reasonable mind, after taking into consideration all the competent evidence in the case.

c. The prosecution may in argument comment to the Commission on an accused's failure to testify.

4. Identification of Accused.

The accused may be required to testify for the purpose of identification, respecting his name, age, rank, occupation, identifying marks or characteristics and his status and whereabouts during the period alleged in the charges and specifications, excepting therefrom all testimony relative to the issue of guilt or innocence.

5. Interpreters and Interpretation.

a. No criticism of an interpreter, direct or implied, will be made in open court by counsel of either side until the following steps have been taken:

- (1) The Chief Interpreter will be advised of a complaint during the next court recess.
- (2) The Chief Interpreter will investigate the matter and:
 - (a) Convince the complaining party that no substantial error exists; or
 - (b) Caution and advise the interpreter if necessary; or
 - (c) Prepare a correction of the record to be entered as a stipulation upon reconvening of the Commission; or
 - (d) Prepare an opinion to be given to the Commission if required.
- (3) If the Chief Interpreter cannot satisfy both the prosecution and the defense, the complaining party will send a message to the Commission requesting an off-record conference in the matter.

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b. Counsel are reminded that:

- (1) Interpreting between oriental and occidental language is not comparable to coding and decoding cypher messages, but requires a distressing amount of circumlocution and rearrangement of thought.
- (2) Counsel is advised, when working through an interpreter:
 - (a) To use short, simple questions as free from artifice as if examining a small child.
 - (b) Whenever it is necessary to refer to previous testimony, to lay a foundation to insure that both the interpreter and the witness understand the reference to previous testimony.
- (3) The following types of questions are particularly to be avoided as leading to misunderstanding and futile discussions:
 - (a) Long questions. (Impossible for the interpreter and witness to remember)
 - (b) Complicated questions. (Dependent clauses confuse both interpreter and witness.)
 - (c) Conditional questions. (Usually beyond comprehension of an oriental witness.)
 - (d) Sarcastic questions. (Usually depend on untranslatable emphasis or play on words; waste effort)
 - (e) Negative questions. ("You did not see them, did you?" Answer will be, "Yes, I did not see them" or "No, I saw them")
 - (f) Questions hinging on the precise meaning of a single word. (The interpreter picks from several choices that English word which he believes will most closely express his understanding of the witness. To question the witness about the English word is futile)
- (4) The senior member of the staff of both prosecution and defense are charged with instructing their assistants in these rules and thereafter to apply prompt corrective action to stop at once any violation of the principles announced herein.

7. Authentication of Record of Trials.

a. The record of trial will be prepared under the supervision of the prosecution for the signature of the President of the Commission and the senior member of the prosecution staff.

b. The record will be submitted to the Defense Counsel for check by him before the record is authenticated by the prosecution and the President of the Commission. The Defense Counsel will note on the

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record the fact that the record has been submitted to him and checked by him prior to authentication.

c. In the event that the record cannot be authenticated by the President of the Commission and the senior member of the prosecution staff by reason of the death, disability, or absence of either or both of them, it shall be signed by a member of the Commission in lieu of the president and by another member of the prosecution staff, if there be one, in lieu of the senior member of the prosecution staff, otherwise by another member of the commission.

SECTION II OUTLINE OF PROCEDURE

The following outline of procedure will govern the conduct of trials before military commission of persons, units and organizations accused as war criminals:

There will be present:

- Commission
- Accused
- Prosecution Staff
- Defense Staff
- Interpreters
- Commission Reporters
- Press Representatives
- Photographers
- Spectators

All persons in the courtroom will be seated prior to the time set for arraignment. The "Balliff" for the Commission will announce the entrance of the members of the Commission by calling "Attention". All present in the courtroom will stand and remain standing until the Members of the Commission are seated.

SEATING OF THE COMMISSION: The presiding Member (senior officer) will be seated in the center, with the Law Member on his left. Remaining Members will be seated alternately to the right and left of the Presiding Member in order of seniority.

When the Commission is ready, the trial proceeds substantially as follows:

PRESIDING OFFICER: "The Commission is in session and is ready to hear any matter to be brought before it."

PROSECUTOR: "The prosecution is ready to proceed with the trial of the United States of America against" (name of the accused as read from the caption).

PROSECUTOR: "The accused is present, together with defense counsel appointed by the convening authority. The prosecution is ready to proceed."

PRESIDING OFFICER: "You may proceed."

PROSECUTOR: "The Reporters will be sworn."

(The Reporters rise. The Prosecutor facing the Reporters repeats the following oath:)

"You (names of Reporters) swear that you will faithfully perform the duties of reporters to this Commission. So Help you God."

REPORTERS: "I do."

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(The Reporters sit down and thereafter are not required to rise until oath is administered to the Commission and Prosecutors, after which they resume their seats and remain seated throughout the trial.)

PROSECUTOR: "The Interpreters will be sworn."

(The Interpreters rise, and the Prosecutor facing them repeats the following oath:)

"You (names the Interpreters) swear that you will truly interpret in the case now in hearing. So Help you God."

INTERPRETERS: "I do".

(Interpreters are then seated.)

PROSECUTOR: "The following members of the Commission appointed by Paragraph _____, Special Orders No. _____, Headquarters _____, dated _____ (as amended by Paragraph _____, Special Orders No. _____, dated _____ are present."

(The Prosecutor announces by name and rank the Members are present.)

"There are no Members absent."

(Or: "Absent, Colonel Jones, sick in hospital.")

PROSECUTOR: "The Prosecution submits, for incorporation into the record of these proceedings, the following documents:

"Letter Order AG 000.5 (5 Dec 45) LS, General Headquarters, Supreme Commander for the Allied Powers, dated 5 December 1945, with the subject being 'Regulation Governing the Trials of Accused War' Criminals.'

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"Letter Order AG 000.5 (10 Dec 45) LS, General Headquarters, Supreme Commander for the Allied Powers, dated _____, with the subject being "Trials of _____"

"Letter Order AG 000.5 (10 Dec 45), General Headquarters, United States Army Forces, Pacific, dated _____, with the Subject 'Trials of _____'."

"Paragraph _____ of Special Orders _____, Headquarters Eighth Army, dated _____, (entitled 'Appointment of a Military Commission')."

(Any changes in Special Orders will be noted by the Prosecutor. Defense Counsel will have been given an opportunity to examine these documents prior to their being offered.)

PRESIDING OFFICER: "There being no objections, the Orders will be received and incorporated into the record of these proceedings. Does the Prosecution desire to challenge any Member of the Commission for cause?"

PROSECUTOR: "The prosecution has no Challenges" (or as the case may be).

PRESIDING OFFICER: "Does the Defense desire to challenge any Member of the Commission for cause?"

DEFENSE: "The Defense has no challenge for cause (or 'The Defense challenges Colonel _____ for cause.' The Defense then states reason for challenge)."

PROSECUTOR: "The Prosecution is ready to proceed with the arraignment of _____ (name of accused)."

PRESIDING OFFICER: "The Commission will be sworn."

(All persons in the room will rise and stand until the swearing of the Commission and of the Prosecution is completed. Each Member of the Commission raises his hand as his name is called by the Prosecutor who administers the following oath:)

PROSECUTOR: "You Colonel _____, Colonel _____, etc., do swear that you will well and truly try and determine, according to the evidence, the matter now before you, between the United States of America and the person to be tried, and that you will duly administer justice without partiality, favor or affection, according to your conscience, the best of your understanding, and the Custom of War in like cases; and you do further swear that you will not divulge the findings or sentence of the court until they shall be published by the proper authority or duly announced by the court except to the Prosecutor and Assistant Prosecutor; neither will you disclose or discover the vote or opinion of any particular Member of the Commission upon the findings or sentence, unless required to give evidence thereof as a witness by a court of justice in due course of law. So Help you God."

EACH MEMBER OF THE COMMISSION: "I do".

(Members of the Commission lower their hands but remain standing while the Presiding Officer administers the following oath to the Members of the Prosecution Staff.)

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PRESIDING OFFICER: "The Prosecution will be sworn. You Major _____, Captain _____, do swear that you will faithfully and impartially perform the duties of Prosecutor in the case now brought before this Commission. So Help you God."

EACH MEMBER OF THE PROSECUTION: "I do."

(All now resume their seats except the Prosecutor.)

DEFENSE: "The Charges and Specifications were received by the Defense Counsel and the accused has been duly apprised of each offense charged. The accused has also been advised of his rights as provided in paragraph 5 b of Letter AG 006.5 (5 Dec 45) LS, General Headquarters, Supreme Commander for the Allied Powers, entitled 'Regulations Governing the Trials of Accused War Criminals', heretofore introduced into the record of these proceedings."

PRESIDING OFFICER: "Whom does the accused desire to introduce as Defense Counsel?"

(If the accused desires the regularly appointed Defense Counsel the proceedings will continue. If the accused desires counsel of his own selection to the exclusion of regularly appointed Defense Counsel, and the desired Counsel is present, then the regularly appointed Defense Counsel will be excused and the proceedings will continue. If the accused desires counsel of his own selection and requests that the proceedings be continued until such counsel is made available to him, the Commission will consider the availability of desired Counsel and if the request of the accused is granted will continue the case until such time as Counsel can be secured. If the request of the accused is denied, he will be given an opportunity to make another selection but the arraignment will continue with the regularly appointed Defense Counsel. If accused elects to conduct his own defense and fails to designate Special Counsel, the regularly appointed Defense Counsel will be present with the accused and available in the event he desires its advice.)

PRESIDING OFFICER: "The Charges and Specifications will be read to the accused."

(Prosecutor will read the complete Charges and Specifications, together with affidavit of accuser and reference for trial.)

PROSECUTOR: "With permission of the Commission, the Prosecution introduces the Charges and Specifications which have been read to the accused for incorporation into the record of these proceedings."

(Prior to offer, Defense Counsel will be given an opportunity to examine Charge and Specifications.)

PRESIDING OFFICER: "There being no objection, the Charge and Specifications are received and will be incorporated into the Record. Are there any special pleas by the Defense?"

DEFENSE: "There are no special pleas (or as the case may be)."

PRESIDING OFFICER: "_____ (Naming accused) at this time the Commission will hear your plea to the Charge and Specifications which have been read to you. You may plead either 'Guilty' or 'Not Guilty'."

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(Accused and Defense Counsel will rise and accused will plead "Guilty" or "Not Guilty" to each Specification and to the Charge. If accused has not determined his plea and if he so requests, Commission will set a time for receipt of plea and continue the proceedings until that time. If accused refused to plead, the Presiding Officer will then state:)

PRESIDING OFFICER: "The accused having failed to plead to the Charge and Specifications, there will be entered in his behalf upon the record the plea of "Not Guilty".

PRESIDING OFFICER: "The Prosecution will make its opening statement."

(Prosecution makes opening statement.)

PROSECUTOR: "The Prosecution calls as its first witness:_____."

(Witness presents himself in front of and faces the Presiding Officer, and if a member of the Military Services salutes the Presiding Officer. After which, the Prosecutor, standing, administers the following oath to the witness: NOTE: Witness will be sworn according to his particular belief)*

"You swear (or affirm) that the evidence you shall give in the case now in hearing, shall be the truth, the whole truth, and nothing but the truth. So Help you God."

*NOTE : Japanese Witnesses will be sworn by the following oath:

"In accordance with my conscience I swear that I will tell the truth, I will hide nothing and I will conceal nothing."

PROSECUTOR: "Do you understand that if you fail to tell the truth as you have just sworn to do, you are liable to punishment by the Commission, or any other American Court or Commission?"

(Prosecution proceeds with direct examination. This is followed by Cross-Examination by the Defense, and Examination by the Commission in the case of each witness called by the Prosecutor.)

(Documentary Evidence will be introduced as follows:)

PROSECUTOR: "The Prosecution offers in evidence (the original) (a certified copy) (a photostatic copy) of an affidavit (or other document) attached to the record and marked Exhibit_____, (to be withdrawn at the conclusion of the trial and an authenticated copy substituted therefor).

(After the Prosecution presents its evidence, the Prosecutor announces:)

"The Prosecution rests."

PRESIDING OFFICER: "The Defense will make its opening statement."

(The Defense makes its opening statement).

DEFENSE COUNSEL: "The Defense calls as its first witness_____."

(Defense presents its case in the same manner as outlined above for the prosecution. The Prosecutor administers the oath to the witnesses. Defense then proceeds with direct examination, followed by cross-examination by the Prosecution, re-direct

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(After the Prosecution presents its evidence, the Prosecutor announces:)

"The Prosecution rests."

PRESIDING OFFICER: "The Defense will make its opening statement."

(The Defense makes its opening statement).

DEFENSE COUNSEL: "The Defense calls as its first witness_____."

(Defense presents its case in the same manner as outlined above for the prosecution. The Prosecutor administers the oath to the witnesses. Defense then proceeds with direct examination, followed by cross-examination by the Prosecution, re-direct

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examination by the Defense, and examination by the court, if desired. When the Defense has completed its case, the Defense Counsel announces:)

DEFENSE COUNSEL: "The Defense rests."

The Prosecution now presents any rebuttal witnesses, followed by presentation of any rebuttal witnesses for the Defense.)

PRESIDING OFFICER: "The Commission will now hear the arguments for the Prosecution and Defense." (Arguments will be conducted as directed by the Commission)

PRESIDING OFFICER: "The Commission will be closed."

(When the Commission arrives at its judgment and sentence, the Commission will be opened. In the presence of the Accused, his Counsel, and the personnel of the Prosecution (All of whom remain standing), the Presiding Officer announces the judgment and sentence.)

BY COMMAND OF LIEUTENANT GENERAL EICHELBERGER:

/s/ Ward W. Conquest
WARD W. CONQUEST
Colonel, AGD
Adjutant General

R E S T R I C T E D

HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Commanding General
APO 343

16 January 1947

AG 000.5 (YR)

SUBJECT: Rules of the Procedure and Outline of Procedure for
Trials of Accused Criminals.

TO : Presidents of War Crimes Commissions.

Letter, this headquarters, subject, same as above, file
number AG 000.5 (YO), dated 5 February 1946, is amended as follows;

Paragraph 2 of Section I is hereby rescinded.

BY COMMAND OF LIEUTENANT GENERAL EICHELBERGER

/s/ Otis N. Luckman
/t/ OTIS N. LUCKMAN
Capt. A.G.D.
Asst. Adjutant General

R E S T R I C T E D